IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 20477

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

COMMERCE COMPANY d/b/a LAMAR HOTEL,
Respondent.

Petition for Enforcement of an Order of the National Labor Relations Board, sitting at Washington, D. C.

(March 3, 1964.)

Before HUTCHESON and BELL, Circuit Judges, and BREWSTER, District Judge.

HUTCHESON, Circuit Judge: This not at all a run of the mine case. The order of the board was based not on a finding that the failure to bargain, to which the board's order was directed, occurred within the first year of certification, but on the ground that, under the board's decision in *Mar-Jac Poultry Co., Inc.*, 136 NLRB 785, the board had the right, because of respondent's failure to bargain during part of the first year, to extend the year for a period equivalent to that part of the year in which the respondent had failed to bargain.

Respondent insists that it had taken its action in refusing to bargain in the good faith belief that the union, which had been certified, had lost its majority and that the board's

action upon the pretended authority of the *Mar-Jac Poultry* case, *supra*, in extending the union's certification period for an additional time, was invalid because neither statute nor decision authorizes such action.

In support of this view, respondent cites and strongly relies on *NLRB* v. *Minute Maid*, 283 F(2) 705 (5th Cir.) and *NLRB* v. *Florida Citrus Canners Coop.*, 288 F(2) 630 (5th Cir.).

The board, citing and relying on *NLRB* v. *Sonics Corp.*, 312 F(2) 610, *Ray Brooks* v. *NLRB*, 348 U.S. 96, *NLRB* v. *Sharon Hats, Inc.*, 289 F(2) 628, *Superior Engraving Co.* v. *NLRB*, 183 F(2) 783, and *Franks Bros. Co.* v. *NLRB*, 321 U.S. 702, insists that the board was right and the respondent wrong.

A careful reading of the briefs and cases cited by both sides and consideration of the oral arguments convince us: that there is a good deal of weight in the board's position, that its action in this case was not beyond its powers: and, in view of the undisputed evidence as to earlier failure to bargain, we think the board's action, in making the order dismissing the decertification petition and granting the union an additional six months beyond the certification year in which to bargain, was reasonable and proper.

ENFORCED.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 20477

NATIONAL LABOR RELATIONS BOARD,
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COMMERCE COMPANY d/b/a LAMAR HOTEL,
Respondent.

DECREE

Before: Hutcheson and Bell, Circuit Judges and Brewster, District Judge.

BY THE COURT:—

THIS CAUSE came on to be heard upon the petition of the National Labor Relations Board for the enforcement of a certain order issued by it against the Respondent on December 21, 1962. The Court heard argument of respective counsel on January 7, 1964, and has considered the briefs and transcript of record filed in this cause. On March 3, 1964, the Court being fully advised in the premises, handed down its decision granting enforcement of the Board's Order.

ON CONSIDERATION WHEREOF, it is ordered, adjudged, and decreed by the United States Court of Appeals for the Fifth Circuit that the said order of the National Labor Relations Board in said proceeding be enforced and that Respondent, Commerce Company d/b/a Lamar Hotel, its officers, agents, successors, and assigns abide by and perform the direction of the Board in said order contained.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 20477

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

COMMERCE COMPANY d/b/a LAMAR HOTEL,
Respondent.

Petition for Enforcement of an Order of the National Labor Relations Board, sitting at Washington, D. C.

(March 30, 1964)

On Petition for Rehearing

BEFORE HUTCHESON and BELL, Circuit Judges, and BREWSTER, District Judge.

PER CURIAM:

It is ORDERED that the petition for rehearing in the above entitled and numbered cause be, and it is hereby DENIED.

137 NLRB No. 136

Houston, Texas
D 3099

SUPPLEMENTAL DECISION CLARIFYING CERTIFICATION OF REPRESENTATIVE AND ORDER DISMISSING DECERTIFICATION PETITION

(Number and Title Omitted)

On September 23, 1960, the Regional Director for the Twenty-third Region issued a certification of representative in which he certified Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO, herein called the Union, as the exclusive collective bargaining representative of the Employer's employees in the unit found appropriate by the Board in its Decision and Direction of Election,[1] and subsequently amended by the Board on September 12, 1960.[2]

After the Union was certified, it engaged in collective bargaining with the Employer and a dispute arose with respect to the unit placement of 11 employees. As a result of this dispute, on March 28, 1961, the Union filed a charge alleging that the Employer refused to bargain in violation of Section 8(a)(5) of the Act.[3] Subsequently, on May 18, 1961, pursuant to the advice of the Regional Director, the Union withdrew its unfair labor practice charge and filed

[1] *Lamar Hotel*, 23-RC-1561, August 15, 1960, not reported in printed volumes of Board decisions.

[2] The unit description was amended pursuant to a Motion for Redetermination of Unit filed by the Employer. The certified unit is as follows:

> All employees of the Employer at the Lamar Hotel, Houston, Texas, including regular part-time employees, office clerical employees, auditing department employees, but excluding temporary and irregular part-time employees, confidential employees, professional employees, guards, and supervisors as defined in the Act.

[3] Case No. 23-CA-1193.

a Motion for Clarification of the certified unit. In this motion, the Union requested a hearing to determine the unit placement of the 11 employees named therein. On November 6, 1961, the Board issued an Order Directing Supplemental Hearing for the purpose of taking testimony and other evidence as to the unit placement of the 11 named employees then in dispute.

On November 13, 1961, before the Board-ordered hearing commenced but after the certification year had expired, a decertification petition was filed by an employee asserting that the Union was no longer the representative of the employees in the aforedescribed unit, as defined in Section 9(a) of the Act. Thereupon, the Regional Director consolidated the remanded proceeding on the motion for Clarification together with the RD proceeding for purposes of hearing.

The consolidated hearing was held before C. L. Stephens, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with this proceeding to a three member panel.

The Employer and the Petitioner in Case No. 23-RD-100 contend that the RD petition is timely since it was filed more than 12 months after the Union was certified as exclusive bargaining representative and at a time when no 8(a)(5) charge was pending. In addition, the Petitioner also contends that he has satisfied all prerequisites for the filing and processing of his petition and that an election should now be ordered. Finally, both the Employer and the Petitioner contend, in pertinent part, that the Union's Motion for Clarification is moot by virtue of the expiration of the certification year and the filing of the decertifi-

cation petition. On these grounds the Employer and the RD Petitioner move to dismiss the Union's Motion for Clarification.

On the other hand, the Union contends that the decertification petition is not timely and should be dismissed. The Union argues, in effect, that because of the dispute which arose over the unit placement of the 11 employees described in its Motion for Clarification, because of the advice it received from the Regional Director concerning the withdrawal of the 8(a)(5) charge which it had filed, and because of the filing of the Motion for Clarification and the delay ensuing therefrom it has been deprived of a substantial amount of time necessary to the proper enjoyment of its certification. On these grounds, the Union moves to dismiss the decertification petition. We find merit in the contentions of the Union.

In *Mar-Jac Poultry Company, Inc.*, 136 NLRB No. 73, where an employer, by refusing to bargain, deprived the union of its bargaining rights for a substantial part of its certification year, the Board dismissed an employer's petition which the employer had filed after the certification year had expired, and granted the union an additional period beyond the certification year for bargaining. In that same case, the Board also announced that in future cases, where other similar inequities appear, the Board will grant an additional period of time beyond the certification year for purposes of bargaining. We believe that such inequities appear in the instant proceeding.

Here, it appears that during the course of bargaining the parties were in disagreement over the unit placement of some 11 employees. As the result of this dispute, bargaining ceased, and the Union filed 8(a)(5) charges against the Employer. Thereafter, pursuant to advice received

from the Regional Director, the Union, in order to resolve the unit placement dispute, withdrew the 8(a)(5) charges and filed its Motion for Clarification. However, before the unit placement dispute could be resolved by the Board, the certification year expired. It appears that during the pendency of the above described 8(a)(5) charge and the Union's Motion for Clarification the parties have not engaged in collective bargaining.

From the foregoing, it appears that approximately six months have elapsed from the filing of the 8(a)(5) charge to the expiration of the certification year. During this period of time, the Union has been deprived of its right to unimpeded collective bargaining. Accordingly, following the *Mar-Jac Poultry* doctrine, we shall sustain the Union's motion to dismiss the decertification petition and grant the Union an additional period of six mo ns from the resumption of negotiations in which to engage in collective bargaining.

Turning to the unit placement of the 11 named employees in the Motion for Clarification, the record shows that during the course of the consolidated hearing the parties stipulated that 9 of the 11 employees named in the Motion for Clarification should be included in the unit. In accordance with the parties' stipulation we shall therefore include Vivian Buchanan, Ross H. Collins, Evelyn Crutchfield, Betty Cannon, Richard C. Johnson, N. L. Patella, C. C. Penn, L. B. Nance and Ben Atkinson.[4]

Finally, with respect to the unit placement of Martin Amador, the Employer contends that he should be excluded as a supervisor and the Union would include him as

[4] The record shows that Lenora Smith, also named in the Union's motion, was no longer employed by the Employer at the time of the hearing. We shall not consider her unit placement.

an employee. The record shows that Amador directs the works of waiters and bus boys. He receives compensation which is about 20 percent higher than that received by the waiters. In addition, it appears that he effectively recommended the hiring of a waiter about three weeks prior to the hearing. The record also shows that he assigns the banquet waiters, room service waiters and bus boys to their specific work stations and that these employees have been informed that Amador is their "boss." In view of the foregoing, we find that Martin Amador is a supervisor within the meaning of the Act, and we shall therefore exclude him from the bargaining unit.

ORDER

IT IS HEREBY ORDERED that the Certification of Representative heretofore issued in Case No. 23-RC-1561, be, and it hereby is, clarified by specifically including in the unit therein found appropriate, Vivian Buchanan, Ross H. Collins, Evelyn Crutchfield, Betty Cannon, Richard C. Johnson, N. L. Patella, C. C. Penn, L. B. Nance, Ben Atkinson,[5] and by specifically excluding Martin Amador as a supervisor.

[5] Should any of the above-named employees no longer be employed by the Employer, or, if they are not now engaged in the same or substantially similar employment as shown in the record, then, this clarification shall apply to their replacements who are performing those jobs which gave rise to the unit placement dispute.

IT IS FURTHER ORDERED that the petition in Case No. 23-RD-100 be, and it hereby is, dismissed.

Dated. Washington, D. C. Jul 12 1962

.....
Frank W. McCulloch, Chairman

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John H. Fanning, Member

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Gerald A. Brown, Member
NATIONAL LABOR
RELATIONS BOARD

(SEAL)

INTERMEDIATE REPORT

Statement of the Case

(Number and Title Omitted)

Upon a charge duly filed on July 31, 1962, by Hotel & Restaurant Employees & Bartenders International Union, AFL-CIO, herein called the Union, the General Counsel of the National Labor Relations Board through the Acting Regional Director for the Tewnty-third Region issued a complaint, dated August 3, 1962, alleging that Commerce Company d/b/a Lamar Hotel, herein called the Respondent or the Company, has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the National Labor Relations Act, as amended, 61 Stat. 136, 73 Stat. 519, herein called the Act. The Respondent's answer denies the commission of any unfair labor practices.

Pursuant to notice a hearing was held at Houston, Texas, on September 24, 1962, before the undersigned Trial Examiner. All parties were present and represented at the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing on the issues. When some question was raised regarding the proper name of the Respondent the hearing, with the consent of all parties, was continued until October 9. On October 8, I received a stipulation and motion to close the record executed by all parties and on the same date I issued a telegraphic order receiving the stipulation in evidence and closing the record.[2] In accordance with the terms of the stipulation the parties reserved the right to file briefs on or before October 22. On October 19, I received a brief from the General Counsel.

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[1] The correct name of the Respondent as stipulated by all parties.

[2] The stipulation, motion, and order are received in evidence and marked Trial Examiner's Exhibit 1.

Upon the entire record in the case, including the record in prior representation and decertification cases, I make the following:

Findings of Fact

I. The correct name and business of the Respondent

The complaint alleges that Lamar Hotel, a Texas corporation, maintains its principal office and place of business at Houston, Texas, where it is engaged in operating a hotel. During the 12 months preceding the issuance of the complaint the gross revenue from its hotel operation exceeded $500,000, and in the same period it purchased goods and materials which were shipped to it directly from points outside the State of Texas, valued in excess of $5,000.

The answer admits the jurisdictional fact allegations, but avers the Respondent, Lamar Hotel, is not a Texas corporation.

In the above-mentioned stipulation the parties stipulated that:

> Respondent, LAMAR HOTEL, is a trade name of the Commerce Company, a Texas corporation, and has been at all times material herein.

I, therefore, find and conclude that the correct and proper name of the Respondent is the one set forth in the caption of this case and the correction applies to all references to Lamar Hotel in the pleadings herein.

Contrary to the Respondent's assertion that the admitted jurisdictional facts do not establish the requisite jurisdictional commerce, I find the Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. The labor organization involved

The parties stipulated that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. The unfair labor practices

A. *The issue*

The question presented is whether the Company refused to bargain collectively with the Union about July 14, 20, and 24, 1962, after it had been certified by the Board as the statutory representative of the Company's employees in a unit appropriate for the purpose of collective bargaining. The facts are not disputed and the issue here is a legal one.

B. *Proceedings leading to the Union's certification*

On August 15, 1960, the Union filed a petition and after hearing the Board issued its Decision and Direction of Election and thereafter an election was conducted among the employees as directed.[3] Subsequently, the Board on September 12, 1960, pursuant to the Company's Motion for Redetermination, amended the bargaining unit as follows:

> All employees of the Employer at the Lamar Hotel, Houston, Texas, including regular part-time employees, office clerical employees, auditing department employees, but excluding temporary and irregular part-time employees, confidential employees, professional employees, guards, and supervisors as defined in the Act.

On September 23, 1960, the Regional Director issued a certification of representative to the Union as the exclusive

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[3] *Lamar Hotel*, 23-RC-1561, not reported in printed volumes of Board decisions.

bargaining representative of the Company's employees in the above-described unit.

Thereafter the Union and the Company engaged in collective bargaining and a dispute arose with respect to the unit placement of 11 employees. As a result of this dispute the Union, on March 28, 1961, filed a charge alleging that the Company had refused to bargain in violation of Section 8(a)(5) of the Act.[4]

On May 18, 1961, the Union withdrew its charge and filed a Motion for Clarification of the certified unit, and requested a hearing to determine the unit placement of the 11 employees named therein. On November 6, 1961, the Board issued an Order Directing Supplemental Hearing for the purpose of taking testimony and other evidence as to the unit placement of the 11 employees in dispute.

On November 13, 1961, after the certification year had expired, a decertification petition was filed by an employee asserting the Union was no longer the representative of the employees in the above-described unit, as defined in Section 9(a) of the Act.[5] The Regional Director thereupon consolidated the Motion for Clarification and the RD proceeding for the purpose of hearing.

Following the hearing, the Board, on July 12, 1962, issued a Supplemental Decision Clarifying Certification of Representatives and Order Dismissing Decertification Petition,[6] herein referred to as the Supplemental Decision. In brief, the Board clarified the unit by specifically including therein and excluding therefrom the employees in the dispute, granted the Union's motion to dismiss decertification petition because it was untimely and, as the certifi-

[4] Case No. 23-CA-1193.
[5] Case No. 23-RD-100.
[6] 137 NLRB No. 136.

cation year had expired, granted the Union an additional period of 6 months from the resumption of negotiations to engage in collective bargaining.

C. The refusal to bargain

On July 12, 1962, the Union sent a letter to the Company wherein it stated that in accordance with the Supplemental Decision it was submitting two copies of a proposed contract and requested a reply within 5 days respecting the time, date and place to commence negotiations.

On July 20, the Union addressed a second letter to the Company requesting a list of employees, the pay rate for each department included in the certified unit and changes, if any, in the pay schedule since the date of certification.

On July 20, the Union sent a third letter to the Company wherein it pointed out the Company had failed to answer its request to commence contract negotiations and advised the Company it was available and ready to confer at any time, date, and place, and requested a reply within 5 days regarding the commencement of bargaining negotiations.

By letter dated July 27, the Company notified the Union it was refusing to bargain with it for the following reasons.

(1) The Union no longer represents a majority of the hotel employees and the Hotel has a good faith doubt that the Union represents a majority of its employees.

(2) The Board's erroneous refusal to order an election on the decertification petition does not alter the Union's loss of majority status; moreover, the Board's erroneous order does not impose on the Hotel any lawful obligation to bargain.

(3) The filing of the Decertification Petition, the employees' signatures submitted to the Board on the supporting petitions, and the demands of the Petitioner in the decertification case that the Hotel refuse to bargain plainly establishes the Hotel belief—the Union lost its majority—is not only reasonable but plainly right.

As appears above, the Union filed a charge on July 31, and the complaint issued on August 3.

Concluding Findings

The complaint in substance alleges that subsequent to the Union's demands for bargaining negotiations on July 14, 20, and 24, the Company since July 27, has unequivocally refused to meet or otherwise bargain with the Union as the exclusive representative of its employees in the unit described above. The answer of the Company admits the appropriateness of the unit and that it refused and is now refusing to bargain collectively with the Union. Affirmatively, the Company seeks to justify its refusal to bargain on the same grounds as set forth in its letter of July 27, to the Union, namely that the Union did not, and does not, represent a majority of the employees in the unit and that the Company and the employees supporting the decertification petition are entitled to an election to determine whether the Union represents a majority of the employees in the certified unit.[7] The answer further states that the Union's Motion for Clarification did not deprive the employees of their statutory right to renounce the Union, nor

[7] On August 7, 1962, Joe Melton and other employees filed a Petition of Intervention in this case, which the Regional Director referred to the Trial Examiners' Division for ruling thereon. The General Counsel filed his opposition to the petition and on August 21, Trial Examiner George A. Downing issued an order denying the petition for leave to intervene. Neither Melton nor any other employee appeared at the hearing on September 24, 1962.

did the protracted litigation of this motion operate to extend the certification year so as to preclude the employees from asserting their right to renounce the Union.

Plainly, the Company's refusal to bargain with the Union stems from its disagreement with the findings and conclusions in the Board's Supplemental Decision for all issues and arguments advanced here were appropriately presented to and fully considered and determined by the Board in its Supplemental Decision.[7] It is, of course, well settled that issues which have been fully litigated in a prior representation proceeding may not be relitigated thereafter in a complaint proceeding, unless it can be shown that facts not then known had subsequently become available and were of substantial materiality to the resolution of the issues involved.[8] The Company, having declined the Union's request to bargain in the certified unit on July 27, 1962, I find that on that date and at all times thereafter the Company has refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate

[7] There is no merit to the Company's contentions that the Supplemental Order is not an "order to bargain," and that a new election should be held in the certified unit since the Union no longer represents a majority of the employees therein, as evidenced by the decertification proceeding. While an order certifying a union is not a final order within the meaning of Section 10(f) of the Act, the Supreme Court, in *Ray Brooks* v. *N.L.R.B.* (348 U.S. 96), held that an employer is under a statutory duty to bargain with the union certified by the Board, even though, shortly after the election which resulted in the certification, the union lost its majority through no fault of the employer. See also, *N.L.R.B.* v. *Clark & Lewis Co.* (274 F. 2d 817 (C.A. 5)).

[8] *Pittsburgh Plate Glass Co.* v. *N.L.R.B.*, 313 U.S. 146, 161-162; *N.L.R.B.* v. *West Kentucky Coal Co.*, 152 F. 2d 198, 200-201 (C.A. 6), cert. denied 328 U.S. 866; *Allis-Chalmers Manufacturing Co.* v. *N.L.R.B.*, 162 F 2d 435 (C.A. 7); *Quaker City Life Insurance Company*, 138 NLRB No. 5, 50 LRRM 1537; *Continental Bus System, Inc., etc.*, 138 NLRB No. 103, 51 LRRM 1184.

unit in violation of Section 8(a)(5) of the Act and has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) thereof.[10]

IV. The effect of the unfair labor practices upon commerce

The activities of the Respondent set forth in section III above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The remedy

Having found that the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, I shall recommend that the Respondent cease and desist therefrom and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit, and, if an understanding is reached embody such understanding in a signed agreement.

Upon the basis of the above findings of fact, and upon the entire record in the case, I make the following:

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[10] *Quaker City Life Insurance Company and Continental Bus System, supra, Sam Belz Upholstered Products Company, Inc.* 138 NLRB No. 60, 51 LRRM 1073; *Howard Rippee, et al., d/b/a Pacific Multiforms Company,* 138 NLRB No. 89, 51 LRRM 1141.

Conclusion of Law

1. Commerce Company d/b/a Lamar Hotel is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Hotel & Restaurant Employees & Bartenders International Union, AFL-CIO, is a labor organization as defined in Section 2(5) of the Act.

3. All employees of the Respondent at the Lamar Hotel, Houston, Texas, including regular part-time employees, office clerical employees, auditing department employees, but excluding temporary and irregular part-time employees, confidential employees, professional employees, guards, and supervisors as defined in the Act constitute a unif appropriate for the purpose of collective bargaining with the meaning of Section 9(b) of the Act.

4. The above-named labor organization was on September 23, 1960, and at all times thereafter, the exclusive representative of all employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing, on and since July 27, 1962, to bargain collectively with the above-named labor organization as the exclusive representative of its employees in the aforesaid appropriate unit, the Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings and conclusions and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following:

RECOMMENDED ORDER

Commerce Company d/b/a Lamar Hotel, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning wages, hours of employment, and other conditions of employment, with Hotel & Restaurant Employees & Bartenders International Union, AFL-CIO, as the exclusive representative of all its employees in the following appropriate unit:

> All employees of the Respondent at the Lamar Hotel, Houston, Texas, including regular part-time employees, office clerical employees, auditing department employees, but excluding temporary and irregular part-time employees, confidential employees, professional employees, guards, and supervisors as defined in the Act.

(b) In any like or relater manner, interfering with the efforts of Hotel & Restaurant Employees & Bartenders International Union, AFL-CIO, to bargain collectively for the employees in the said appropriate unit as the exclusive bargaining agent.

2. Take the following affirmative action which I find is necessary to effectuate the policies of the Act:

(a) Upon request, bargain collectively with Hotel & Restaurant Employees & Bartenders International Union, AFL-CIO, as the exclusive bargaining agent in the appropriate unit, with respect to rates of pay, wages, hours of employment, and other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at the Lamar Hotel, Houston, Texas, copies of the notice attached hereto and marked "Appendix."[11] Copies of said notice, to be furnished by the Regional Director for the Twenty-third Region shall, after being signed by an authorized representative of the Respondent, be posted immediately upon receipt thereof and be maintained by it for a period of 60 consecutive days thereafter in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that such notices are not altered, defaced, or covered by any other material.

(c) Notify the said Regional Director in writing within 20 days from the date of the receipt of this Intermediate Report and Recommended Order what steps the Respondent has taken to comply herewith.[12]

Dated at Washington, D. C.

/s/ Reeves R. Hilton
Reeves R. Hilton
Trial Examiner

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[11] In the event that this Recommended Order be adopted by the Board the words "A DECISION AND ORDER" shall be substituted for the words "THE RECOMMENDATIONS OF A TRIAL EXAMINER" in the notice. In the further event that the Board's Order be enforced by a decree of a United States Court of Appeals, the words "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER" shall be substituted for the words "A DECISION AND ORDER."

[12] In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify said Regional Director in writing within 10 days from the date of this Order what steps the Respondent has taken to comply herewith."

APPENDIX

NOTICE TO ALL EMPLOYEES PURSUANT TO THE RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL, upon request, bargain with HOTEL & RESTAURANT EMPLOYEES & BARTENDERS INTERNATIONAL UNION, AFL-CIO, as the exclusive representative of all the employees in the bargaining unit described below with respect to rates of pay, wages, hours of employment, and other conditions of employment, and if an understanding is reached, embody such an understanding in a signed agreement. The bargaining unit is:

All employees of the Respondent at the Lamar Hotel, Houston, Texas, including regular part-time employees, auditing department employees, but excluding temporary and irregular part-time employees, confidential employees, professional employees, guards, and supervisors as defined in the Act.

WE WILL NOT in any like or related manner, interfere with the efforts of **HOTEL & RESTAURANT EMPLOYEES & BARTENDERS INTERNATIONAL UNION, AFL-CIO,** to bargain collectively for the employees in the appropriate unit as the exclusive bargaining agent.

COMMERCE COMPANY
D B A LAMAR HOTEL
(EMPLOYER)

Dated..... By .....
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 6617 Federal Office Building, 515 Rusk Avenue, Houston 2, Texas (Tel. No. Capitol 8-0611, Ext. 271), if they have any question concerning this notice or compliance with its provisions.

140 NLRB No. 32 D-5053
Houston, Texas

DECISION AND ORDER

(Number and Title Omitted)

On October 30, 1962, Trial Examiner Reeves R. Hilton issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the Intermediate Report attached hereto.[1] Thereafter, the Respondent filed exceptions to the Intermediate Report[2] and the General Counsel filed limited exceptions.[3]

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the excep

[1] We hereby correct the following inadvertent errors in the Intermediate Report: In the section entitled "C. *The refusal to bargain*," the date of the first letter to the Respondent should be July 14, 1962, instead of July 12, and the date of the third letter should be July 24 instead of July 20.

[2] As the record, including the exceptions, adequately presents the issues and the positions of the parties, the Respondent's request for oral argument is hereby denied.

[3] The General Counsel excepted to the apparently inadvertent omission from the Findings of Fact in the Intermediate Report of the following jurisdictional fact: "During this same period less than 75% of its guests remained for a month or longer." Inasmuch as this was alleged in the complaint and admitted by the Respondent in its answer, the Intermediate Report is amended accordingly.

tions, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

140 NLRB No. 32

IR-482-62
Houston, Tex.

ORDER

The Board adopts as its Order the "Recommended Order" of the Trial Examiner.

Dated, Washington, D. C. Dec. 21 1962.

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Frank W. McCulloch, *Chairman*

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Boyd Leedom, *Member*

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Gerald A. Brown, *Member*
NATIONAL LABOR
RELATIONS BOARD

(SEAL)